

**2020-TIOL-1113-CESTAT-KOL**

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH, KOLKATA  
COURT NO. II**

**S.Tax Appeal No.78619 of 2018**

Arising out of Order-in-Appeal No.42/SLG-CGST/2018, Dated: 28.06.2018

Passed by Commr. of CGST & Excise, Siliguri

**Date of Hearing: 19.06.2019**

**Date of Decision: 19.06.2019**

**M/s FAIRFEST MEDIA LTD  
25C/1, BELVEDERE ROAD, ALIPORE  
KOLKATA-700027**

**Vs**

**CGST AND EXCISE  
KOLKATA SOUTH, 180, SHANTIPALLY  
RAJDANGA MAIN ROAD, KOLAKTA-700107**

**Appellant Rep by:** Shri Ankit Kanodia, CA

**Respondent Rep by:** Shri T Mondal, AR

**CORAM:** P K Choudhary, Member (J)

**ST** - The assessee is registered under category of "Business Auxiliary Service" and is engaged in organizing of travel and other business exhibitions in various States within the Territory of India - They also got registered for import of service - During audit, it was noticed that the assessee has not paid service tax on software service and patent related expenses and also from legal charges paid, which they were required to pay under the reverse charge basis - Accordingly Spot Memo was issued and assessee paid the service tax along with interest and communicated the same to the Department vide their reply - SCN was issued demanding service tax along with interest and for imposition of penalty under Section 78 - The issue is no more res-integra in view of the decision of Tribunal in case of *Bhoruka Aluminium Limited* [2016-TIOL-3060-CESTAT-BANG](#) wherein it is held that the Department did not bring any material on record to prove that there was suppression and concealment of facts to evade payment of tax, consequently, imposition of penalty under Section 78 of the Act is not justified - In view of the same, the impugned

**Case law cited:**

*Bhoruka Aluminium Limited Vs. CCEx. & S.Tax, Mysore* - [2016-TIOL-3060-CESTAT-BANG...](#) Para 5

**FINAL ORDER NO. 75779/2019**

**Per: P K Choudhary:**

The facts of the case in brief are that the appellant is registered under the category of "Business Auxiliary Service" and is engaged in organizing of travel and other business exhibitions in various States within the Territory of India. The appellant also got registered for import of service. During the course of Audit for the period, 2013-14 and 2014-15, it was noticed that the appellant has not paid the service tax on software service and patent related expenses and also from legal charges paid, which they were required to pay under the reverse charge basis. Accordingly Spot Memo dated 18.01.2016 was issued and the appellant paid the service tax amount along with interest and communicated the same to the Department vide their reply dated 29.01.2016. Show-cause notice dated 02.05.2016 was issued demanding service tax along with interest and for imposition of penalty under Section 78. The Adjudicating Authority confirmed the demand of service tax of Rs.6,46,390/- and Rs.48,717/- and since the entire amount was already paid, he appropriated the same. He also confirmed and appropriated the interest amounting to Rs.2,44,920/- and Rs.16,422/-. Further, he imposed a penalty of Rs.3,47,555/-. On appeal, the Id.Commissioner upheld the Order-in-Original and rejected the appeal. Hence the present appeal before the Tribunal.

2. The Id.Counsel appearing on behalf of the appellant, submits that in compliance to the Spot Memo dated 18.01.2016, the entire amount of service tax along with applicable interest was deposited and communicated to the Department by reply dated 29.01.2016. He further submits that there was no case for issuance of show-cause as there was no suppression on the part of the appellant. All the transactions were duly recorded in the Books of Account and the Audit Team pointed out the liability of payment of service tax under the Reverse Charge Mechanism (RCM) while going through the Books of Account only. It is his submission that the appellant assessee was under the bonafide belief that there was no service tax liability on the services received since the provider of services had not charged any service tax. The liability was under reverse charge mechanism and the appellant could know about this liability about only when the Audit Team pointed out. Therefore, they never disputed the liability and immediately paid the entire amount of service tax as calculated along with the applicable interest, which was also a substantial amount. It is his contention that since the entire amount was paid along with interest and hence there was no occasion for issuance of any show-cause notice for imposition of penalty. In support of his contention, he relied upon the various decisions of the Tribunal.

3. The Id.D.R. appearing on behalf of the Revenue, justified the impugned order.

4. Heard both sides and perused the appeal records.

5. I find that the present issue involved in this appeal is no more res-integra in view of the decision of the Tribunal in the case of *Bhoruka Aluminium Limited Vs. CCEx. & S.Tax, Mysore reported in 2017 (51) STR 418 (Tri.Bangalore)*

= [2016-TIOL-3060-CESTAT-BANG](#). The relevant paras of the said decision are reproduced below :

"4. The learned counsel for the appellant submitted that imposition of penalty under Section 78 of the Finance Act is contravention to the provisions of Section 73(3) of the Finance Act, 1994. He further submitted that service tax along with interest has already been paid by the appellant before issuance of show cause notice. He also submitted that Section 73(3) of the Finance Act, in unambiguous terms states that when an assessee has paid service tax either on his own or on the basis of the officer's ascertainment and informs the officer of such payment, then the said Section does not give any power to such officer to issue a show cause notice in respect of the tax so paid and such issuance of show cause notice is sans force of law and accordingly, not sustainable and tenable. The learned counsel relied upon the decision of this Tribunal in the case of *South India Paper Mills Ltd. v. C.C.E. & S.T.* reported in - [2016-TIOL-2294-CESTAT-BANG](#)

wherein in the similar circumstances, the penalty under Section 78 of the Finance Act was dropped in toto. He also relied upon the following case laws :

(i) *Intercontinental Consultants & Technocrats Pvt. Ltd. v. U.O.I.* [2013 (29) S.T.R. 9 (Del.)] = [2012-TIOL-966-HC-DEL-ST](#)

(ii) *Amit Sales v. C.C.E.* [2009 (13) S.T.R. 165 (Tri.-Del.)] = [2008-TIOL-1749-CESTAT-DEL](#)

(iii) *Jindal Saw Ltd. (IPU) v. C.C.E.* [2013 (30) S.T.R. 490 (Tri.-Ahmd.)]

(iv) *C.S.T., Bangalore v. Motor World* [2012 (27) S.T.R. 225 (Kar.)] = [2012-TIOL-418-HC-KAR-ST](#)

(v) *Hindustan Petroleum Corporation Ltd. v. C.C.E., Mumbai-II* [2012 (25) S.T.R. 161 (Tri.-Mumbai)]

(vi) *C.C.E. & S.T., LTU, Bangalore v. Adeco Flexione Workforce Solutions Ltd.* [2012 (26) S.T.R. 3 (Kar.)] = [2011-TIOL-635-HC-KAR-ST](#)

(vii) *Reliance Industries Ltd. v. Commissioner of Customs, Rajkot* [2013 (287) E.L.T. 433 (Tri.-Ahmd.)].

6. On the other hand, the learned AR submitted that the appellant is guilty of suppression of facts as he failed to inform the Department regarding availment of irregular Cenvat credit and, therefore, the lower authority has rightly imposed the penalty under Section 78 of the Finance Act, 1994.

7. After considering the submissions by both the parties and perusal of the provisions of Sections 73, 76 and 78 of the Finance Act, 1994 and the judgments relied upon by the appellant cited supra, I find that Section 73(3) is very clear as it says that if tax is paid along with interest before issuance of the show cause notice, then in that case, show cause notice shall not be issued. In this case, I find that the contention of the appellant that he bona fide believed that he is not liable to pay service tax but during the audit, the audit party informed him that he is liable to pay service tax, then he immediately paid the entire service tax along with interest. Except mere allegation of suppression, the Department did not

*bring any material on record to prove that there was suppression and concealment of facts to evade payment of tax. Consequently, in my opinion, the imposition of penalty under Section 78 of the Act is not justified and bad in law. Moreover, in the impugned order, the learned Commissioner (Appeals) has not recorded any finding on suppression of facts by the appellant with an intention to evade tax. In view of the above discussion, I set aside the impugned order by allowing the appeal of the appellant."*

6. I find that the facts of the present case are squarely covered by the aforesaid decision of the Tribunal.
7. In view of the above, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential benefit.

(Dictated and pronounced in the open court)

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